IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 773 of 2002
In
SPECIAL CIVIL APPLICATION No. 9207 of 2001

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JYOTSNABEN HARESHBHAI THAKER (WIDOW) - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
Mr.A.J.Desai, AGP for Respondent(s) : 1,
LAW OFFICER BRANCH for Respondent(s) : 2,
MR JB PARDIWALA for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 04/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The appellant Shri H.P.Thaker has challenged in this appeal the judgment and order dated 23rd January, 2002 passed by the learned Single Judge of this Court dismissing his Special Civil Application no.9207 of 2001. During the pendency of this appeal. The appellant-original petition has died, therefore, his legal representatives have come on record and prosecuted this appeal.

2. The appellant-original petitioner was serving as a Civil Judge (Junior Division) and J.M.F.C., Dakor, between 15-6-1992 and 8-12-1994. At that time, racket of issuing bogus warrants and summonses were prevailing at a large scale in different subordinate Courts in the State of Gujarat and with a view to bust such racket, Shri Manohar Galani and Shri Mahesh Mahatre residents of Bombay carried a sting operation. They contacted Shri Khambolja an Advocate practising at Dakor for filing false complaint against seven accused persons (one of them was Shri Madhavbhai Laxmanbhai Pendse, the then Acting Chief

Justice of Bombay High Court) and to get false order of warrant by paying price for it. They were assured by an Advocate Shri Khambolja that he will manage with the Magistrate for securing such bogus warrants, and for that purpose, his professional fees was fixed at Rs.6500/-. Thereafter, on 24th November, 1994, the bogus private complaint was filed at about 5.00 p.m. for the offences under Sessions 363,354, 506(2) read with Sec.114, IPC against seven accused in the name of one Manjulaben Shankerbhai Parmar alleged complainant who was stated to be a resident of Dungar Bhagol, Dakor. She was presented before the petitioner-delinquent officer, but neither did the delinquent officer carry out any examination of the complainant under Section 200 Criminal Procedure Code, nor did he record any statement of the complainant on oath; nor made any attempts to inquire about the alleged offences stated in the complaint by the complainant. On 24th November, 1994, the delinquent officer had orally passed an order of issuance of sommons against all the accused in the complaint. Thereupon, on the very day at about 7.00 p.m., Shri Khambolja from his office contacted the

delinquent officer on phone in presence of Shri Ramesh Mohanbhai Prajapati, Sr.Clerk of the Court of Civil Judge (J.D.), Dakor, and Shri Manohar Mangaram Galani as well as Shri Mahesh Mahatre and asked the delinquent officer to issue warrants instead of summonses. Thereupon, delinquent officer had told Advocate Shri Khambolja to come and collect the order of warrant on the next day, i.e. 25th November, 1994 at 11.00 a.m. Accordingly, on the next day i.e. 25th November, 1994 at 11.00 a.m. papers of that case were again put up before the delinquent officer and said Shri Ramesh Mohanbhai Prajapati, Sr. Clerk, was asked to write the order of warrant against each of the accused in sum of Rs.1000/- and below it the delinquent officer had put his signature and directed the Sr. Clerk Shri Prajapati to put up the date of 24-11-1994 instead of 25-11-1994 though the order of warrant was actually passed on 25-11-1994.

3. For the aforesaid charge of committing the act of malpractice unbecoming of a judicial officer, the delinquent officer was charge-sheeted, regular departmental inquiry was held, and he was dismissed

from service and the respondent High Court also took decision to dismiss him from service, and accordingly, a recommendation was made by the High Court to the State Government for passing formal order. As required under the law, the State Government was bound to act on the recommendation made by the High Court. Therefore, the State Government passed formal impugned order of terminating the delinquent officer from service. The said order was challenged by him before the learned Single Judge and after hearing the learned Counsel for the parties as stated earlier, the learned Single Judge by his judgment and order dated 23rd January, 2002 dismissed the writ petition. Hence, this appeal.

4. Learned Counsel Shri I.S.Supehia raised the following six contentions – (i) The State Government had not supplied the copy of the recommendation made by the High Court for terminating his services, and therefore, he was not in a position to properly defend his case. He submitted that non supplying of recommendation made by the High Court to the State Government for terminating the services of the

petitioner amounts to violation of principle of natural justice, and therefore, only on this ground, the impugned order of termination be quashed and set side, so also, the order passed by the learned Single Judge dismissing the writ petition. (ii) Mr. Supehia then submitted that, in the instant case, most important witness Shri Khambolja was not examined, therefore, the impugned order of termination was required to be quashed and set aside. (iii) Mr. Supehia then contended that this was a case of ' no evidence '. Therefore, the decision arrived at by the High Court as well as the State Government to terminate the services of the petitioner is erroneous and liable to be quashed and set aside. (iv) Mr. Supehia then submitted that there was neither any charge of corrupt practice or demand of illegal gratification against the petitioner so as to support the finding recorded by the Inquiry Officer. Therefore, the impugned decision and order of termination has to be quashed and set aside. (v) Shri Supehia then submitted that the delinquent officer was not supplied the necessary documents and the documents which were asked for, therefore, he was

unable to properly defend himself during the inquiry. Hence, the impugned order of termination be quashed and set aside. (vi) Mr. Supehia lastly submitted that in any case, the penalty of termination from service was excessive because while terminating the services of the petitioner, the High Court has not considered the longstanding 25 years of service put on by the officer and the punishment of dismissal from service was not commensurate to the guilt which was found to be proved against the delinquent officer in the departmental inquiry.

5. The first contention raised by Mr. Supehia that failure on the part of the State Government and the High Court in not providing the delinquent officer with the copy of the recommendation made by the High Court to the State Government for terminating the services of the petitioner-delinquent officer amounts to violation of principle of natural justice, therefore, the impugned order of termination has to be quashed and set aside, has no substance. Once the disciplinary authority i.e. the High Court of Gujarat has come to the conclusion that the charges found to

be proved against the delinquent officer are of very serious nature, therefore, he cannot be continued in service and the order of dismissal of service be passed against the delinquent officer, then the High Court has to make formal recommendation and send it to the State Government along with the decision of termination from service. Once it is received by the State Government, it is obligatory upon the State Government to pass an order of termination from service. The law on this point is very clear. It is of course no doubt true that the appointing authority of the petitioner-delinquent officer was State Government, but once his service was placed for disposal before the High Court, then for all practical purposes, the High Court had control over subordinate judges under Article 235 of the Constitution. As a disciplinary authority once the High Court takes the decision after regular departmental inquiry is held against the delinquent officer, then only thing is that it cannot pass an order of termination of service of the delinquent officer as the appointing authority is the State Government. Therefore, once the decision of dismissal

from service is taken, it has to make formal recommendation to the State Government. Once it is received by the State Government, then as held by the Honourable Supreme Court in the case of REGISTRAR (ADMN) HIGH COURT OF ORISSA, CUTTACK V. SISIR KANTA SATAPATHY (DEAD) BY LRs. AND ANOTHER reported in (1999) 7 SCC 725, formal order to give effect to such a decision has to be passed by the State Government on the recommendation of the High Court. Thus, it was a mere formality, therefore, there was no question of violation of principle of natural justice by not supplying recommendation made by the High to the State Government along with its decision to terminate the services of the petitioner.

6. Reliance was placed by Mr. Supehia on the judgment rendered by the Honourable Supreme Court in the case of MANAGING DIRECTOR, ECH., HYDERABAD AND OTHERS v. B. KARUNAKAR AND OTHERS, reported in (1993) 4 SCC 727, which in our considered opinion, has no application to the facts of this case. Therefore, we have refrained ourselves from dealing with the same in detail. We can only say that it was a case

regarding non supply of inquiry report whereas, in the instant case, non supply of the recommendation for terminating the services of the petitioner. The petitioner was already supplied with the copy of the decision taken by the High Court dismissing him from service. There was no question of any prejudice being caused to the petitioner. Hence, this first contention of Mr. Superhia is rejected.

7. This brings us to the second contention raised by Mr. Supehia regarding non examination of Advocate Khambolja. It may be stated that Advocate Shri Khambolja was not cited as a witness as it was obvious that he was not going to support the case of the department. Non examination of Advocate Shri Khambolja who himself was equally responsible would not be fatal when there was a thumping evidence against the petitioner. We have already narrated in brief the case of the department against the petitioner and it is more than clear that the department has proved the case against the delinquent officer. The witnesses may lie but not the circumstances. The way in which the delinquent

officer had passed an order of summons on previous evening on 24th November, 1994, and then, after being contacted on phone by the Advocate, he changed the order of summons into warrant on the next day i.e. 25th November, 1994 speak volumes about his conduct. Therefore, the third contention of Mr. Supehia that it was a case of 'no evidence' has also to be straight away rejected. It may be stated that the standard of departmental proceedings and a criminal trial are totally different. In departmental proceedings, one has to decide the case on preponderance of probabilities. Once the disciplinary authority on the material placed before it has come to the conclusion that the department has proved its case against the delinquent officer, then this Court cannot sit in appeal over such decision. It is to be stated that this Court was exercising its extraordinary writ jurisdiction under Article 226 of the Constitution and when the learned Single Judge of this Court on gross facts of the case refused to exercise extraordinary jurisdiction under Article 226 of the Constitution in favour of the delinquent Officer, then certainly this Court in Letters Patent

Appeal would not like to interfere with such order unless it is pointed out that the judgment and order passed by the learned Single Judge dismissing his writ petition was perverse. We do not find any such mistake committed by the learned Judge which calls for the interference of this Court in this appeal.

8. The fourth contention of Mr. Supehia that neither there was any charge nor there was any finding regarding corrupt practice on the part of the delinquent officer or demand of illegal gratification, therefore, the impugned order of termination has to be quashed and set aside, has no substance. In nutshell, we have reproduced the case of the department against the delinquent officer. The way in which the officer has changed its own order of summonses into warrants on the next day shows clear intention of corrupt practice and the Inquiry Officer has also rightly given his finding against the delinquent officer on that point. Reliance was placed by Mr. Supehia on the judgment of the Honourable Supreme Court in the case of P.C.JOSHI v. STATE OF U.P. AND OTHERS, reported in 2001 AIR SCW 2924, has

no application to the facts of this case. It was a case in which no specific material was brought on record to show or prove that there was any mala fide or extraneous reasons on the part of the delinquent officer. In fact, the test to be adopted in such cases as that of the present delinquent officer is already stated by the Honourable Supreme Court, and five criterias have been laid down to judge the conduct of the delinquent officer:

(i)where the judicial officer has conducted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty;

(ii)that there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii)that if he has acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(iv)that if he had acted in order to unduly favour a party;

(v)that if he had been actuated by corrupt motive.

All the aforesaid five criterias were there in case of present delinquent officer.

9. The fifth contention raised by Mr. Supehia was that copies of documents demanded by him were not supplied to him, therefore, he was not able to defend his case in the inquiry before the Inquiry Officer. The following documents were asked for:

(1)Statement dated 8-12-1994 of Advocate D.M.Khambolja recorded by the Registrar of the High Court Shri R.R.Jain.

(2)Statement of Advocate Vinod Varma recorded by the Registrar of the High Court Shri R.R.Jain.

(3) Statement dated 8-12-1994 of Ashok H.Thaker, Criminal Board Clerk, Dakor Court, recorded by the Registrar of the High Court.

(4)Statement dated 8-12-1994 of Advocate M.M.Khambolja recorded by the Registrar of the High Court Shri R.R.Jain.

9.1 This very contention was raised before the learned Single Judge also, and in our considered opinion, it was rightly rejected by the learned Single Judge by giving cogent reasons for it in paragraphs 15 and 16 if the judgment. We fully agree with the reasonings assigned by the learned Single Judge. When a document has no bearing on the charge or if it is not relied on by the Inquiry Officer to prove the charge, then non supplying of such documents would not cause any prejudice to the delinquent officer. At the cost of repetition, we may say that , in the instant case, the charge was of a very serious nature and from the material placed before the Inquiry Officer the only conclusion possible was that he was guilty and that he had indulged in corrupt practice by changing his previous order of summonses into warrants on the next day for extraneous consideration.

9.2 Once such a serious charge is found to be proved against the delinquent officer, then in our considered opinion, except penalty of termination, no other penalty could have been imposed. Merely because

he had put on 25 years of service is no ground to interfere. One dirty fish is sufficient to spoil the pond. If lesser punishment was imposed, then it would be a mockery of justice.

10. Under the circumstances, it cannot be said that the penalty of dismissal from service was not commensurate with the guilt which was found to be proved against the delinquent officer. When such a serious charge of corruption is found to be proved against the delinquent officer, then all other factors including longstanding service of 25 years is outweighed.

11. Except the aforesaid contentions, no other contentions were raised.

12. We have carefully gone through the judgment and order passed by the learned Single Judge dismissing the writ petition, and we are in complete agreement with the same.

13. In view of the above discussion, this appeal

fails and is hereby dismissed, however, there shall be no orders as to costs.

(B.J.Shethna,J.)

(M.D.Shah,J.)

bjs-lee.